IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Writ Petition No.45 of 2007

Shri Vijay Baburao Shirke & ors. Petitioners
Vs.
The State of Maharashtra & anr. Respondents

Mr.S.L.Maneshinde for petitioners.
Mr.Subhash Jha i/b. M/s.Law Global for Resp.no.2.
Mr.S.R.Shinde, APP for State.

CORAM: B.H.MARLAPALLE, J.

July 19, 2007.

P.C.

. Heard Mr.Maneshinde, the learned counsel for the petitioners and Mr.Jha, the learned counsel for the respondent no.2 - the complainant Board. The learned APP appears for the State of Maharashtra. This petition prays for quashing the order of issuance of process passed by the learned Metropolitan Magistrate's 8th Court (now transferred to 47th Court), Esplanade Mumbai on 5/7/2003 in Criminal Case No.284/M/03 (new Case No.2295/W/2003). The complaint has been filed by the respondent no.2 Board under Section 200 of Cr.P.C. read with Sections 11(3), 23(1) and 27 of the Securities and Exchange Board of India Act, 1992 as well as under Section 175 of IPC. The larned Magistrate has passed the order of issuance of process on 5/7/2003. On the

cause of delay in approaching this Court Mr.Maneshinde submitted that the summons against the present petitioners were issued on 21st September 2006 and they were served on them on 7/11/2006. This petition has been filed before this Court on 20/12/2006.

. This Court has consistently held that the order of issuance of process must be at the first instance challenged before the Sessions Court by filing Criminal Revision Application under Section 397 of Cr.P.C. and admittedly such a remedy has not yet been exhausted by any of the present petitioners. Mr.Maneshinde, the learned counsel for the petitioners submitted that the alternative remedy was not resorted to because the learned Metropolitan Magistrate may at any time commit the case to the Special Court which is the Sessions Court, for trial. This has been replied to by Mr.Jha pointing out that the amendment in the SEBI Act that the trial should be conducted by the Sessions Court Judge / Special Court has come into effect only on 29/10/2002 and, therefore, it is doubtful whether in the instant case the Magistrate will be required to commit the case to the Sessions Court.

. Be that as it may, the petition has been filed on 20th December 2006 and if as on today the learned Magistrate has not passed committal order, the petitioners have equally efficacious alternative remedy of filing a criminal revision application before the Sessions Court and I do not deem it appropriate to entertain this petition under Article 227 of the Constitution at this stage even though the inherent powers of this Court under Section 482 of Cr.P.C. have been sought to be invoked.

. Hence the petition is disposed with liberty to approach the Sessions Court and if criminal revision application is filed within two weeks from today, the period of pendency of this petition from 20th December 2006 till today be taken into consideration for condonation of delay in filing the revision application, if any.

(B.H.MARL